

FILED
IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE
FEB 20 PM 3:08

STATE OF TENNESSEE, *ex rel.*
ROBERT E. COOPER, JR., ATTORNEY
GENERAL and REPORTER,

Plaintiff,

v.

ELMER VIRULA, individually and doing
business as TPS TAX PROFESSIONAL
SERVICES, INC. and OFFICE
PROFESSIONAL SERVICES, INC.;
TPS TAX PROFESSIONAL SERVICES,
INC., a Tennessee corporation; and OFFICE
PROFESSIONAL SERVICES, INC., a
Tennessee corporation,

Defendants.

No. _____

**MEMORANDUM OF LAW IN SUPPORT OF
STATE'S MOTION FOR STATUTORY TEMPORARY INJUNCTION**

The State has initiated a civil law enforcement proceeding brought by the Attorney General of the State of Tennessee ("Attorney General" or "State"), pursuant to the Unauthorized Practice and Improper Conduct statutes¹ ("Unauthorized Practice of Law statutes" or "UPL statutes"), the Tennessee Consumer Protection Act of 1977² ("TCPA"), the Notary Public statute³ which constitute *per se* violations of the TCPA, the Attorney General's general statutory

¹Tenn. Code Ann. § 23-3-101 *et seq.*

²Tenn. Code Ann. § 47-18-101 *et seq.*

³Tenn. Code Ann. § 8-16-401, -402 and -403.

authority,⁴ and the Attorney General's authority at common law, to secure injunctive and other equitable relief prohibiting the Defendants from engaging in the practice of law or law business when Defendant Virula does not possess a Tennessee law license and from engaging in other unfair or deceptive acts or practices.

As an overview, Defendants have misrepresented to consumers that Defendant Elmer Virula is an attorney and certified public accountant in the State of Tennessee. Defendants have mislead consumers regarding their ability to provide legal services such as immigration document preparation. Defendants have promised they can provide valid marriage licenses, but instead produced falsified government records to consumers. Defendants have advertised as a "notaria publica" without the statutorily-required disclaimer.

For the reasons more fully stated below, a temporary injunction should issue after a full hearing on this matter.

PARTIES

1. Plaintiff, State of Tennessee, *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the UPL statutes, which prohibits engaging in the practice of law or doing law business unless the person has been duly licensed,⁵ and the TCPA, which prohibits unfair or deceptive acts or practices affecting the conduct of trade or commerce. Pursuant to Tenn. Code Ann. § 23-3-103(c)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the UPL statutes. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General, at the request of the Division of Consumer Affairs, may initiate civil law enforcement proceedings in the name of the State to stop violations of the TCPA and to secure such equitable and other relief as may be appropriate in each case.

⁴Tenn. Code Ann. § 8-6-109.

⁵Tenn. Code Ann. § 23-3-103(a).

2. Defendant Elmer Virula ("Defendant Virula" or "Virula") is an individual and resident of Tennessee, residing at 4733 Billingsgate Road, Antioch, Tennessee. Upon information and belief, Mr. Virula has been an owner, operator, officer, director, employee, agent and manager of Defendants TPS Tax Professional Services, Inc. and Office Professional Services, Inc., and has personally participated in their day-to-day activities and operations. Additionally, Mr. Virula has directly engaged in the alleged conduct and unfair or deceptive acts or practices described herein, had knowledge or should have had knowledge of the practices, and had the authority to control and stop the violations of the law.

3. Defendant TPS Tax Professional Services, Inc. ("Defendant TPS" or "TPS"), is a Tennessee corporation with its principal place of business at 86 Thompson Lane, Nashville, Tennessee. Its registered agent is TPS Tax Professional Services, Inc., located at 2825 Hartford Drive, Nashville, Tennessee.

4. Office Professional Services, Inc. ("Defendant OPS" or "OPS"), is a Tennessee corporation with its principal place of business at 2179 Nolensville Pike, Nashville, Tennessee. Its registered agent is Elmer Virula, located at 2179 Nolensville Pike, Nashville, Tennessee.

STATEMENT OF FACTS

Defendants have conducted business from many locations throughout Tennessee including offices on Billingsgate Road in Antioch, South Mountain Street in Smithville, Nolensville Pike in Nashville, and Thompson Lane in Nashville. Defendant Virula and Defendant Tax Professional Services, Inc. refer to the business as "TPS." The business location at 86 Thompson Lane has a sign that states "TPS."⁶ Temporary Protective Status, a status granted to immigrants of certain countries who are unable to safely return to their home country, is commonly referred to as "TPS."

⁶Exhibit A to Motion, affidavit of Jeremy Harwell.

Defendant Elmer Virula is not licensed to practice law in the State of Tennessee.⁷

Advertisements

Defendants have advertised and promoted their ability to provide many services to the Hispanic community and others. On a sign outside the Smithville location, Defendants have advertised as a “notaria publica” without the statutorily-required disclaimer.⁸ In an advertisement placed in the September 2006 edition of El Enlace Latino, Paginas Amarillas Hispanas, Defendant OPS published an advertisement stating Defendant Elmer Virula was a CPA.⁹ Defendant Elmer Virula is not a Certified Public Accountant (“CPA”) in Tennessee.¹⁰

Defendant Virula has certificates and other official-looking documents hanging on the walls of his office which some consumers believe was his certification as a public accountant.¹¹

Tax Preparation

Defendant Virula told consumers he could prepare their income taxes.¹² Defendant Virula misled and deceived consumers with regards to tax laws and regulations.¹³

In 2005, consumer Ms. A. R. went to Defendant Virula for assistance in filing her 2004 tax refund.¹⁴ Ms. A. R. was told by Defendant Virula that she could receive a very large tax refund even though she only worked for three months out of the year.¹⁵ Defendant Virula told

⁷Exhibit B to Motion, affidavit of Adele Anderson.

⁸Exhibit C to Motion, affidavit of Becky Rhodes at 3.

⁹Exhibit A to Motion, affidavit of Jeremy Harwell.

¹⁰Exhibit D to Motion, affidavit of Mark Crocker.

¹¹Exhibit E to Motion, affidavit of Ms. A. R. at 6. *See also* Exhibit F to Motion, affidavit of Mrs. Y. L. at 6.

¹²Exhibit E to Motion, affidavit of Ms. A. R. at 16. *See also* Exhibit F to Motion, affidavit of Mrs. Y. L. at 18, and Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 21.

¹³Exhibit E to Motion, affidavit of Ms. A. R. at 18-20.

¹⁴*Id.* at 16.

¹⁵*Id.* at 17-18.

Ms. A. R. he would use withholdings from illegal immigrants he employed to provide the consumer with this large refund.¹⁶ Ms. A. R. asked Defendant Virula if this practice was legal and he assured her it was.¹⁷ Additionally, Defendant Virula did not file Ms. A. R.'s husband's 1099 form with the tax return.¹⁸

When Ms. A. R. went to an attorney and produced the tax return Defendant Virula prepared, the attorney told her the refund was incorrect.¹⁹ Ms. A. R. was forced to redo her 2004 taxes.²⁰ Due to Defendant Virula's misrepresentations and mistakes, Ms. A. R. now owes seven thousand dollars (\$7000.00) to the IRS.²¹

Immigration

At a date uncertain, but at least by May 2006, Defendants held a seminar for members of the Hispanic community about immigration law. The seminar was held at Defendant OPS's location in Smithville.²² During these seminars, members of the Hispanic community would call Defendant Virula "licenciado," a term generally understood to mean "lawyer" in Spanish.²³ Defendant Virula would respond in the affirmative when called "licenciado."²⁴ When consumers asked employees whether Defendant Virula was a good attorney, the employees would say he was, citing his many years of experience.²⁵

¹⁶*Id.* at 18-20.

¹⁷*Id.* at 19.

¹⁸*Id.* at 25.

¹⁹*Id.* at 24.

²⁰Exhibit E to Motion, affidavit of Ms. A. R. at 24.

²¹*Id.* at 25.

²²Exhibit F to Motion, affidavit of Mrs. Y. L. at 6.

²³*Id.* at 11-12.

²⁴*Id.* at 11.

²⁵*Id.* at 21. *See also* Exhibit G to Motion, affidavit of Mrs. U. T. at 6.

Defendant Virula began the seminar by telling consumers a new immigration law had been passed, but was currently “frozen.”²⁶ Defendant Virula advised consumers to pay their taxes and learn English, or they would be unable to obtain permits to stay in the United States.²⁷ He stated that he could “fix” any immigration problem the consumer faced.²⁸ Defendant Virula promised to “go to court” with the consumers during the immigration process.²⁹

Believing Defendant Virula was an attorney, consumers at the seminar told him about their immigration problems.³⁰ Defendant Virula would respond to each issue, often citing code sections from the law.³¹ Defendant Virula advised consumers that if they could not obtain citizenship under any other law, they should bring in an American citizen.³² Defendant Virula incorrectly told the consumers he would marry them to “fix” their immigration problem.³³

At the end of the seminar, Mr. Virula instructed the attendees to pay five hundred dollars (\$500) and get their fingerprints so he could begin fixing their immigration problems.³⁴ He said he would send the fingerprints to the Federal Bureau of Investigation (“FBI”) to obtain their criminal records.³⁵ Mr. Virula said after he received the records, consumers would have to pay one thousand dollars (\$1000) to “start the process” of fixing their immigration problems.³⁶

Defendant Elmer Virula would also meet with consumers individually at one of Defendants’ office locations. Consumers were told that in order to speak with the “licenciado,”

²⁶*Id.* at 8.

²⁷*Id.* at 9.

²⁸*Id.* at 15.

²⁹*Id.* at 17.

³⁰Exhibit F to Motion, affidavit of Mrs. Y. L. at 13.

³¹*Id.* at 14.

³²*Id.* at 16.

³³*Id.*

³⁴*Id.* at 19.

³⁵*Id.*

³⁶*Id.* at 20.

Defendant Virula, they would need to make an appointment.³⁷ Defendant Virula falsely told consumers he was an attorney.³⁸ In some cases, Defendant Virula stated he was a California immigration attorney and was going to take an exam to become an immigration attorney in Tennessee.³⁹ Defendant Elmer Virula is not licensed to practice law in Tennessee⁴⁰ or California. Defendant Virula also told consumers he could represent them if their case went to the “office of immigration” in Memphis.⁴¹

Consumers would come to Defendants’ offices and explain their immigration situation.⁴² Defendant Virula and/or one of Defendants’ employees would tell consumers which United States Citizenship and Immigration Services (“USCIS”) application to fill out.⁴³

Defendants would prepare immigration forms for consumers, such as I-485 applications for adjusted status.⁴⁴ Consumers would give Defendants monetary payment for the filing fee and a fee for Defendants’ services.⁴⁵ In one case, a consumer gave an employee of Defendant OPS a check made out to “USCIS” for one thousand five hundred and ninety dollars (\$1,590) for filing.⁴⁶ The consumer received a notice from USCIS that her filing fee had never been paid.⁴⁷ When the consumer asked an employee of Defendant OPS about this filing fee, the employee

³⁷Exhibit G to the Motion, affidavit of Mrs. U. T. at 6.

³⁸Exhibit F to Motion, affidavit of Mrs. Y. L. at 25. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 7 and Exhibit G to the Motion, affidavit of Mrs. U. T. at 7.

³⁹Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 7.

⁴⁰Exhibit B to Motion, affidavit of Adele Anderson.

⁴¹Exhibit I to Motion, affidavit of Mrs. P. B. at 11.

⁴²Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 8. *See also* Exhibit I to Motion, affidavit of Mrs. P. B. at 8-9.

⁴³Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 8.

⁴⁴Exhibit G to Motion, affidavit of Mrs. U. T. at 8.

⁴⁵*Id.* at 10-11.

⁴⁶*Id.* at 11.

⁴⁷*Id.* at 15.

replied that USCIS was often wrong about fees and forms it has received.⁴⁸ The consumer later retrieved the check from the bank and the check stated “Pay to the order of “USCIS/O.P.S.” and was cashed by “O.P.S.”⁴⁹ The consumer had never written “O.P.S.” on the check.⁵⁰

Defendant Virula told consumers whether they were eligible for Temporary Protected Status (“TPS”).⁵¹ For a fee, Defendants selected and completed immigrants’ TPS applications and sent them to USCIS.⁵² Defendant Virula would give these immigrants advice about the appeals process of their Temporary Protective Status applications.⁵³ Some of the legal advice Defendant Virula gave immigrants regarding the Temporary Protective Status application process was incorrect and led to deportation or other negative consequences.⁵⁴

Marriage

Defendant Virula stated he could marry consumers under the laws of California, “as if they were in California.”⁵⁵ When consumers asked Defendant Virula if this practice was legal, he said, “Yes.”⁵⁶

Consumers were charged from three hundred to one thousand dollars (\$300-\$1000) for Defendant Virula to marry them.⁵⁷ Defendant Virula told consumers he preferred to marry them

⁴⁸*Id.* at 16.

⁴⁹*Id.* at 22.

⁵⁰*Id.* at 11.

⁵¹Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 8, and 19-20.

⁵²Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 8.

⁵³*Id.* at 22.

⁵⁴*Id.* at 22 and 26.

⁵⁵*Id.* at 11. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 8, and Exhibit I to Motion, affidavit of Mrs. P. B. at 12.

⁵⁶*Id.* at 11.

⁵⁷*Id.* at 12. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 8.

at his house and it would cost extra if the couple got married elsewhere.⁵⁸ Some consumers chose to have a big ceremony and invited many of their friends and family members.⁵⁹

After he “married” these consumers, Defendant Virula would eventually produce a California, County of Los Angeles License and Certificate of Confidential Marriage.⁶⁰ These marriage certificates included many falsities.

On the purported marriage certificates, Defendant Virula wrongfully certified that the consumers were in Los Angeles County when they were married.⁶¹ The California License and Certificate of Confidential Marriage states the marriage must take place in the county in which the license was issued.⁶² The consumers married by Defendant Virula were married in Tennessee, not Los Angeles County, California.⁶³ In some cases, the consumers were married at Defendants’ offices.⁶⁴ Some of the consumers who received these certificates had never even traveled to California.⁶⁵

On the alleged marriage certificate, the issuing clerk certified, by means of a notary, that the marrying parties have personally appeared before them or the person performing the marriage has provided a signed affidavit by the marrying parties.⁶⁶ The consumers married by Defendant

⁵⁸*Id.* at 12.

⁵⁹*Id.* at 13.

⁶⁰Exhibit E to Motion, affidavit of Ms. A. R. and Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

⁶¹Exhibit E to Motion, affidavit of Ms. A. R. and Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

⁶²*Id.*

⁶³Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 13. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 9.

⁶⁴Exhibit E to Motion, affidavit of Ms. A. R. at 9.

⁶⁵*Id.* at 13.

⁶⁶Exhibit E to Motion, affidavit of Ms. A. R. and Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

Virula did not appear before the issuing clerk nor provided Defendant Virula with a signed affidavit of any kind.⁶⁷

In some cases, the purported marriage certificate incorrectly listed the couple's residence.⁶⁸ For example, one certificate lists the address for the "Residence of husband and wife" as the same address as the one listed for the person solemnizing the marriage, *i.e.* Defendant Virula.⁶⁹ The couple has never lived at the address listed.⁷⁰

In certain instances, the alleged marriage certificates issued by Defendant Virula listed an incorrect date as the date of the marriage.⁷¹ Consumer Ms. J. E. M.-P. was married by Defendant Virula on December 19, 2004.⁷² The marriage certificate provided by Defendant Virula states that Ms. J. E. M.-P. and her husband were married on November 20, 2004.⁷³

Some consumers signed the certificate at the marriage ceremony, but on at least one occasion, the consumer did not sign anything.⁷⁴ Those marriage licenses have "/S/" and the couple's name typed where the certificate calls for their signatures.⁷⁵

⁶⁷See Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 13. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 9 and 13.

⁶⁸See Exhibit E to Motion, affidavit of Ms. A. R.

⁶⁹See *id.*

⁷⁰*Id.* at 14.

⁷¹Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

⁷²*Id.* at 17.

⁷³Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

⁷⁴Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 14. *See also* Exhibit E to Motion, affidavit of Ms. A. R. at 10.

⁷⁵See Exhibit E to Motion, affidavit of Ms. A. R.

At least one marriage certificate does not have the signature of the County Clerk, Conny B. McCormack.⁷⁶ On those licenses, Ms. McCormack's name has been typed in where the certificate calls for her signature.⁷⁷

At least one consumer did not receive a copy of their marriage certificate until years after the ceremony, if at all.⁷⁸ At least one consumer got a duplicate, rather than the original license.⁷⁹ Since the certificate produced by Defendant Virula is a "License and Certificate of Confidential Marriage," California law makes it is difficult for anyone to obtain a copy of the license.⁸⁰

Due to all of these falsities, consumers who were married by Defendant Virula may not have a valid marriage. Therefore, some of these consumers may face legal consequences with regards to their taxes and immigration status.⁸¹

ARGUMENT

I. THE DEFENDANTS HAVE ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

The Tennessee UPL statutes prohibit persons from engaging in the "practice of law" or "law business" unless the person is duly licensed to practice law.⁸²

Tenn. Code Ann. § 23-3-101(1) defines "law business" as:

the advising or counseling for valuable consideration of any person as to any secular law, or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document, or instrument affecting or relating to secular rights, or the doing of any act for a valuable consideration in a

⁷⁶See Exhibit H to Motion, affidavit of Ms. J. E. M.-P.

⁷⁷*Id.*

⁷⁸*Id.* at 15-16.

⁷⁹See Exhibit E to Motion, affidavit of Ms. A. R

⁸⁰*Id.* at 27.

⁸¹See Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 21.

⁸²Tenn. Code Ann. § 23-3-101 *et seq.*

representative capacity, obtaining or tending to secure for any person any property or property rights whatsoever, or the soliciting of clients directly or indirectly to provide such services.

Tenn. Code Ann. § 23-3-101(3) defines “practice of law” as:

the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies, or the soliciting of clients directly or indirectly to provide such services.

The Tennessee Supreme Court, which is the final arbiter regarding unauthorized practice of law issues, has held that the conduct described in the statutory definition of “law business,” “if performed by a non-attorney[,] constitute[s] the unauthorized practice of law only if the doing of those acts requires the ‘professional judgment of a lawyer.’”⁸³ Whether conduct constitutes the unauthorized practice of law thus depends upon the particular facts of each case.

The immigration process is very complicated legal process and the consequences of mistakes are great. By selecting the wrong form or incorrectly filling out the correct form, consumers could face very serious consequences. The selection and completion of immigration forms requires the professional judgment of a lawyer.

Defendants are engaged in “law business” without a license to practice law in Tennessee in violation of § 23-3-103(a) by procuring or assisting in the drawing of legal documents for a valuable consideration. Defendants charged consumers a fee for the selection and completion of consumers’ immigration forms.

Additionally, Defendants are engaged in “law business” by advising or counseling consumers for a valuable consideration regarding secular laws. Defendant Virula gave a seminar on immigration laws, citing code from the law when responding to consumers’ immigration

⁸³*In re Petition of Burson*, 909 S.W.2d 768, 776 (Tenn. 1995).

issues. At the end of the seminar, consumers paid Defendants five hundred dollars (\$500) to take on their individual cases. Additionally, Defendant Virula individually advised consumers as to whether or not they were eligible for Temporary Protected Status. Defendant Virula would give these immigrants advice about the appeals process of their Temporary Protective Status applications. Consumers believed Defendant Virula was an attorney and paid accordingly for this advice. Since Defendant Virula is not licensed to practice law in Tennessee, these acts place Defendants in violation of the Unauthorized Practice of Law statutes.

Defendants are engaged in “law business” by soliciting directly or indirectly to provide such services as the assisting in the drawing of legal documents and advising or counseling consumers for valuable consideration. Defendants have advertised as providing immigration services, which involves the selection and completion of immigration forms. Additionally, Defendant Virula has told members of the Hispanic community that he has filled out many TPS applications and would be able to assist anyone with their application.

Defendants are engaged in the “practice of law” by soliciting directly or indirectly to provide legal services such as the drawing of immigration papers or documents in connection with proceedings prospective before any court. Defendants have selected and completed immigration forms for consumers. These documents have been sent to USCIS, where consumers’ cases are adjudicated. Defendants do not employ any person licensed to practice law in the State of Tennessee, and thus are in violation of Tenn. Code Ann. § 23-3-103(a).

II. DEFENDANTS' ACTS AND PRACTICES VIOLATE THE TENNESSEE CONSUMER PROTECTION ACT OF 1977.

The Tennessee Consumer Protection Act of 1977 ("TCPA" or "Act")⁸⁴ is Tennessee's version of a "Little FTC Act."⁸⁵ The model for the TCPA was developed by the Federal Trade Commission in conjunction with the Committee on Suggested State Legislation of the Council of State Governments and is patterned after Alternative # 3 of the Unfair Trade Practices and Consumer Protection Law.⁸⁶ The TCPA has two main operative provisions: § 104(a) prohibits "[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,"⁸⁷ and § 104(b) develops categories of thirty-six prohibited acts and practices which constitute *per se* deception under the Act.⁸⁸ Furthermore, the Act reaches conduct that is not placed into these statutory categories.

The TCPA was not intended to be a codification of the common law and its scope is much broader than that of common-law fraud.⁸⁹

To the contrary, one of the express purposes of the TCPA is to provide additional supplementary state law remedies to consumers victimized by unfair or deceptive business acts or practices that were committed in Tennessee in whole or in part.⁹⁰

Through the TCPA, the State can better protect against business practices that harm consumers and damage the integrity of the marketplace. Under the TCPA, recovery can be obtained without having to meet the burden of proof that is required in a common law fraud case,

⁸⁴ Tenn. Code Ann. § 47-18-101 *et seq.*

⁸⁵ "The little FTC Acts were so designated because of their similarity to the provision of the Federal Trade Commission Act that outlaws unfair or deceptive trade practices." *Tucker v. Sierra Builders, Inc.*, 180 S.W.3d 109, 114 (Tenn. Ct. App. 2005).

⁸⁶ See Council of State Governments, 1970 Suggested State Legislation, Unfair Trade Practices and Consumer Protection Law - Revision (Vol. XXIX), Clearinghouse No. 31, 035 B, Compendium of Unreported and Out-of-State Decisions, filed herewith. See also D. Pridgen, *Consumer Protection and the Law*, § 3:5 (2002).

⁸⁷ Tenn. Code Ann. § 47-18-104(a).

⁸⁸ Tenn. Code Ann. § 47-18-104(b).

⁸⁹ *Tucker*, 180 S.W.3d 109 at 115.

⁹⁰ *Id.* (citing Tenn. Code Ann. § 47-18-102(2) and (4)).

and the numerous defenses that are available to a defendant in a common law fraud case are simply not available to a defendant in a TCPA case.⁹¹ An act or practice can be deceptive even if there is no intent to deceive,⁹² knowledge of the deception,⁹³ or reliance.⁹⁴ Negligent misrepresentations can violate the statute⁹⁵ and the State does not need to prove that any consumer was actually misled or deceived in order to prove that a violation of law has occurred.⁹⁶

The TCPA is a remedial statute⁹⁷ which must be “liberally construed to . . . protect consumers and legitimate business enterprises from those who engage in deceptive acts or practices.”⁹⁸ The TCPA provides for a private right of action⁹⁹ and also vests civil enforcement authority with the Attorney General and the Division of Consumer Affairs.¹⁰⁰ In enacting the TCPA, the General Assembly intended to promote the policy of “maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels be had in [Tennessee].”¹⁰¹

⁹¹ *Tucker*, 180 S.W.3d at 115 (citing *Smith v. Baldwin*, 611 S.W.2d 611, 616 (Tex. 1980)).

⁹² *Smith v. Scott Lewis Chevrolet, Inc.*, 843 S.W.2d 9, 12-13 (Tenn. Ct. App. 1992); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934); *Doherty, Clifford, Steers & Shenfield, Inc. v. FTC*, 392 F.2d 921, 925 (6th Cir. 1968).

⁹³ *Smith*, 843 S.W.2d at 12-13.

⁹⁴ *Harvey v. Ford Motor Credit Co.*, No. 03A01-9807-CV-00235, 1999 WL 486894, at *2 (Tenn. Ct. App. July 13, 1999).

⁹⁵ *Smith*, 843 S.W.2d at 13.

⁹⁶ *Tucker*, 180 S.W.3d at 115.

⁹⁷ *Tucker*, 180 S.W.3d at 115 (citing Tenn. Code Ann. § 47-18-115); *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 925 (Tenn. 1998); *Morris v. Mack Used Cars*, 824 S.W.2d 538, 540 (Tenn. 1992).

⁹⁸ Tenn. Code Ann. § 47-18-102(2); *Ganzevoort v. Russell*, 949 S.W.2d 293, 297 (Tenn. 1997); *Morris*, 824 S.W.2d at 540 (quoting *Haverlah v. Memphis Aviation, Inc.*, 674 S.W.2d 297, 305 (Tenn. Ct. App. 1984)).

⁹⁹ Tenn. Code Ann. § 47-18-109.

¹⁰⁰ Tenn. Code Ann. §§ 47-18-106 to 108.

¹⁰¹ Tenn. Code Ann. § 47-18-102(4).

Aside from the categories which identify conduct as *per se* deceptive, the TCPA does not define “unfair” or “deceptive.”¹⁰² In order to give the broadest scope possible to the protections embodied in the statute and in order to prevent ease of evasion because of overly meticulous definitions, consumer protection laws like the TCPA typically make no attempt to define “unfair” or “deceptive,” but merely declare that such acts or practices are unlawful, thus leaving it to the court in each particular case to determine whether there has been a violation of the statute.¹⁰³

Deception

Section 115 of the TCPA directs the TCPA to be interpreted “consistently with the interpretations given by the Federal Trade Commission and the federal courts pursuant to §5(A)(1) of the Federal Trade Commission Act.”¹⁰⁴ Federal Trade Commission case law currently holds that an act or practice is deceptive if it is “likely to deceive.”¹⁰⁵ The Court of Appeals in *Tucker v. Sierra Builders*¹⁰⁶ has looked to this definition, in holding that under the TCPA, deception is conduct that “causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact.”¹⁰⁷ Thus, the State need not

¹⁰² See Tenn. Code Ann. § 47-18-103. See also *Tucker*, 180 S.W.3d at 115.

¹⁰³ D. Zupanec, *Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts*, 89 ALR 3d 449, 458 (1979). See also *Tucker*, 180 S.W.3d at 114; *Pan American World Airways v. United States*, 371 U.S. 296, 307-08 (1963).

¹⁰⁴ Tenn. Code Ann. § 47-18-115. See also *Tucker*, 180 S.W.3d at 115; *Ganzevoort v. Russell*, 949 S.W.2d at 298.

¹⁰⁵ *FTC v. Consumer Alliance, Inc.*, No. 02C 2429, 2003 WL 22287364 at *4 (N.D. Ill. Sept. 30, 2003); *FTC v. Gill*, 71 F.Supp.2d 1030, 1037 (C.D. Cal. 1999), *aff'd*, 265 F.3d 944 (9th Cir. 2001). Earlier FTC case law referred to a “tendency” or “capacity” to deceive standard, *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 392 (1965); *FTC v. Algoma Lumber Co.*, 291 U.S. 67, 81 (1934).

¹⁰⁶ *Tucker*, 180 S.W.3d at 109.

¹⁰⁷ *Id.* at 115.

prove that any consumer was actually misled or deceived - only that defendants' conduct has a "tendency" to mislead or deceive.¹⁰⁸

Unfairness

The unfairness definition set forth by the FTC was also adopted in *Tucker v. Sierra Builders*.¹⁰⁹ The court followed the FTC policy statement on unfairness¹¹⁰ and defined unfairness as an act or practice that "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."¹¹¹

Consumer injury will be deemed substantial "if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers."¹¹² Substantial injury "must be more than trivial or speculative."¹¹³ "Consumers cannot reasonably avoid injury when a merchant's sales practices unreasonably create or take advantage of an obstacle to the free exercise of consumer decision-making."¹¹⁴ "Practices that unreasonably interfere with consumer decision-making include (1) withholding important information from consumers, (2) overt coercion, or (3) exercising undue influence over a highly susceptible class of consumers."¹¹⁵

The Complaint and the Temporary Injunction Motion allege and provide evidentiary support for a myriad of separate and discrete acts and practices employed by the Defendants

¹⁰⁸ *Id.* See also *Williams v. Bruno Appliance and Furniture Mart*, 379 N.E.2d 52, 54 (Ill. App. Ct. 1978).

¹⁰⁹ *Tucker*, 180 S.W.3d at 116-17.

¹¹⁰ 15 U.S.C.A. § 45(n).

¹¹¹ *Tucker*, 180 S.W.3d at 116 (quoting 15 U.S.C.A. § 45(n)).

¹¹² *Tucker*, 180 S.W.3d at 116 (citing *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365 (11th Cir. 1988)).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

which constitute “unfair” *and* “deceptive” conduct under well-settled federal law and the TCPA.¹¹⁶ Most individual consumer transactions evidence a combination of several unlawful acts and practices and almost always involve false advertising - conduct that readily qualifies as “unfair” and “deceptive.”

The facts indicate Defendants have falsely represented that Defendant Virula is an attorney and certified public accountant when he is not duly licensed in the State of Tennessee to engage in either professions. In particular, Defendant Virula thru the Defendants offers legal services which he is not lawfully qualified to offer. Defendants are also offering the ability to marry and provide marriage certificates to consumers, but in fact they are providing falsified California marriage certificates.

Defendants’ consumer protection violations include but may not be limited to:

By issuing marriage certificates which are falsified and invalid, Defendants are causing confusion as to the source and certification of the marriage licenses in violation of Tenn. Code Ann. § 47-18-104(b)(2).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice to consumers when Defendants do not employ a licensed attorney, Defendants are causing confusion as to the lack of State authorization to practice law in Tennessee in violation of Tenn. Code Ann. § 47-18-104(b)(3).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice when Defendants do not employ a licensed attorney, Defendants are representing that their services have approval by the State that they do not have, in violation of Tenn Code Ann. § 47-18-104(b)(5).

By issuing falsified and invalid marriage certificates to consumers, Defendants are representing the marriage ceremony confers rights it does not, in violation of Tenn. Code Ann. § 47-18-104(b)(12).

By advertising as a “CPA” when he is not a Certified Public Accountant, Defendant Virula is using statements which create a false impression of the quality and origin of the tax services he provides in violation of Tenn Code Ann. § 47-18-104(b)(21).

¹¹⁶ Tenn. Code Ann. § 104(a) and (b).

By advertising and representing the ability to prepare legal documents and provide legal representation and advice to consumers when Defendants do not employ attorneys licensed to practice law in Tennessee, Defendants are in violation of Tenn. Code Ann. § 47-18-104(b)(27).

By advertising notary public, notario publico, or notaria publica services without a conspicuous size notice stating “ I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE, Defendants have engaged in an unfair or deceptive act under Tenn. Code Ann. § 47-18-104.

By representing or implying that Defendant Virula is a notary public or notario publico able to offer services as an immigration consultant, immigration paralegal or expert on immigration matters without the required accredited representative, Defendants have engaged in an unfair or deceptive act under Tenn. Code Ann. § 47-18-104.

It is an unfair or deceptive act under the TCPA for a notary public who is not an attorney licensed to practice law in Tennessee to fail to include in any advertisement the following disclaimer in conspicuous size:¹¹⁷

**I AM NOT AN ATTORNEY LICENSED TO PRACTICE
LAW IN THE STATE OF TENNESSEE, AND I MAY NOT
GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL
ADVICE.** (Emphasis added.)

The disclaimer must be in English and in the language used in the advertisement.¹¹⁸

It is also an unfair or deceptive act under the TCPA for a notary public who is not an attorney licensed to practice law in Tennessee to advise or assist in the selection and completion of immigration forms unless that conduct is specifically authorized by federal law.¹¹⁹

A notary public who is not an attorney licensed to practice law in Tennessee is also prohibited from “representing or advertising that the notary public is an immigration consultant, immigration paralegal or expert on immigration matters unless the notary public is an accredited

¹¹⁷Tenn. Code Ann. § 8-16-401(a).

¹¹⁸Tenn. Code Ann. § 8-16-401(a).

¹¹⁹Tenn. Code Ann. § 8-16-401(b).

representative of an organization recognized by the board of immigration appeals” pursuant to federal law.¹²⁰

Defendants have violated the TCPA by advertising as a “notaria publica” on a sign at their place of business in Smithville, Tennessee without any required disclaimer.¹²¹ By including the term “notaria publica” on their signage without the disclaimer, Defendants are in violation of Tenn. Code Ann. § 47-18-104.

Defendants have advised consumers and assisted in the selection and completion of immigration forms.¹²² Since Defendant Virula is a notary public and not licensed to practice law in Tennessee,¹²³ Defendants are in violation of Tenn. Code Ann. § 47-18-104.

Defendants have represented that Defendant Elmer Virula is an expert on immigration matters by citing his many years of experience as an immigration attorney. Additionally, Defendant Elmer Virula has told consumers he has filed many TPS applications and helped many immigrants receive Temporary Protected Status. Defendant Virula is not an accredited representative of an organization recognized by the board of immigration appeals, and thus, Defendants are in violation of Tenn. Code Ann. § 47-18-104.

IV. THE TEMPORARY INJUNCTION SOUGHT BY THE STATE IS APPROPRIATE UNDER TENN. CODE ANN. §§ 23-3-103(c)(1) and (c)(3), and 47-18-108(a)(1) and (a)(4).

A. This Court Has the Authority to Grant the Requested Relief

¹²⁰Tenn Code Ann. § 8-16-402.

¹²¹Exhibit C to Motion, affidavit of Becky Rhodes at 3 and attached photograph.

¹²²Exhibit H to Motion, affidavit of Ms. J. E. M.-P. at 8 and Exhibit G to Motion, affidavit of Mrs. U. T. at 8.

¹²³Exhibit B to Motion, affidavit of Adele Anderson.

The Attorney General of Tennessee has broad statutory and common law authority with respect to protecting the public.¹²⁴ The Tennessee Supreme Court has held that “[a]s the chief law enforcement officer of the state, the attorney general may exercise such authority as the public interest may require and may file suits necessary for the enforcement of state laws and public protection.”¹²⁵

Tenn. Code Ann. § 23-3-103(c)(1) of the UPL statutes states:

The attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part . . .

Section 108(a)(1) of the TCPA authorizes the Attorney General to bring an action in the name of the State whenever there is reason to believe a party has engaged in, is engaging in, or is about to engage in any act or practice prohibited by the TCPA and that the proceedings would be in the public interest. Tenn. Code Ann. § 47-18-108(a)(1).

In cases such as this one, where a law enforcement authority acts as a “statutory guardian charged with safeguarding the public interest,” the standard for a temporary injunction is lower than the standard applied to private litigants.¹²⁶ The authorization to the Attorney General to seek

¹²⁴ Tenn. Code Ann. § 8-6-109(b)(1). *State ex rel. Inman v. Brock*, 622 S.W.2d 36, 41 (Tenn. 1981); *State v. Heath*, 806 S.W.2d 535, 537 (Tenn. Ct. App. 1991).

¹²⁵ *State v. Heath*, 806 S.W.2d at 537.

¹²⁶ *State v. ExpyFi*, No. 07C3365, at 2, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 21, 2007); *State v. Froehlig*, No. 33293, at 2, Ch. Ct. of Tenn., 21st Jud. Dist., Williamson County (Mar. 2, 2007); *State v. Olomoshua*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Nov. 14, 2006); *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, at 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998); *FTC v. Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634 (M.D. Tenn. Aug. 18, 2005); *Microsoft Corp. v. Action Software*, 136 F.Supp. 2d 735, 738-39 (N.D. Ohio 2001). See also *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975); *FTC v. World Wide Factors*, 882 F.2d 344, 346 (9th Cir. 1989); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988); *The Virginia Beach SPCA, Inc. v. South Hampton Roads Veterinary Ass’n*, 329 S.E.2d 10, 13 (Va. 1985).

injunctive and other equitable relief constitutes the legislative determination that an irreparable injury has already occurred in any violation of the Act.¹²⁷ “Unlike private actions, which are rooted in the equity jurisdiction of the courts, in suits based upon statutory authority, proof of irreparable harm or the inadequacy of other remedies is not required.”¹²⁸ The U.S. District Court for the Middle District of Tennessee has also held, “[w]here a government entity demonstrates a substantial showing of a violation of a statute, such violation is sufficient to establish immediate and irreparable harm.”¹²⁹ Irreparable injury, therefore, need not be shown¹³⁰ and harm to the public is presumed.¹³¹ “The standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”¹³²

In the ordinary case, traditional equitable injunctions require that the trial judge’s discretion balance four factors which are not prerequisites to be met:

The most common description of the standard for a preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to

¹²⁷ 11 Wright & Miller, *Federal Practice and Procedure*, 461-62 (1973).

¹²⁸ *Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005)(internal citations omitted); *see also State v. Olomoshua, et al*, No. 06C2912, at 2, Cir. Ct. of Tenn., 20th Jud. Dist, Davidson County, Part III (Nov. 14, 2006); *State v. Continental Distributing Co., Inc.*, Ch. Ct. of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994).

¹²⁹ *Tennessee Real Estate Comm’n v. Hamilton*, No. 96-3330-III, p. 6, Ch. Ct. of Tenn., 20th Jud. Dist., Davidson County, Part III (Dec. 1996), *aff’d*, No. 01A01-9707-CH-00320, 1998 WL 272788 at *4-6 (Tenn. Ct. App. May 22, 1998).

¹³⁰ *State v. Continental Distributing Co., Inc.*, Ch. Ct of Tenn., 11th Jud. Dist., Hamilton County (Oct. 7, 1994); *SKS Merch., LLC v. Barry*, 233 F.Supp.2d 841, 845 (E.D. Ky. 2002); *FTC v. Int’l Computer Concepts, Inc.*, No. 594CV1678, 1994 WL 730144 at *12 (N.D. Ohio Oct. 24, 1994); *World Travel Vacation Brokers*, 861 F.2d at 1029. *see also People, ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. 1985); *State v. Fonk’s Mobile Home Park & Sales*, 343 N.W.2d 820, 821 (Wis. App. 1983); *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 S.W.2d 362, 370-71 (Mo. App. 1973); *United States v. Sene X Eleemosynary Corp.*, 479 F.Supp. 970, 980-81 (S.D. Fla. 1979).

¹³¹ *FTC v. Nat’l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *3 (M.D. Tenn. Aug. 18, 2005)(internal citations omitted); *see also Hecht Co. v. Bowles*, 321 U.S. 321, 331 (1944); *World Travel Vacation Brokers*, 861 F.2d at 1029.

¹³² *Bowles*, 321 U.S. at 331.

plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendants; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.¹³³

Tenn. R. Civ. P. 65.04 states the standard for the issuance of a temporary injunction is if:

[I]t is clearly shown by a verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment . . . or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

A case such as this one is especially well-suited for a temporary injunction. Section 103(c)(1) of the UPL statute provides that “(t)he attorney general and reporter may bring an action in the name of the state to restrain by temporary restraining order, temporary injunction, or permanent injunction any violation of this part; . . . ,”¹³⁴ and further states “(t)he courts are authorized to issue orders and injunctions to restrain, prevent and remedy violations of this part, the orders and injunctions shall be issued without bond.”¹³⁵ Further, the TCPA provides that “whenever the division has reason to believe that any person has engaged in . . . is about to engage in any act or practice declared unlawful by this part and that proceedings would be in the public interest . . . ”¹³⁶ that “(t)he courts are authorized to issue orders and injunctions to restrain and prevent violations of this part, and such orders and injunctions shall issue without bond.”¹³⁷

¹³³*South Cent. R.R. Auth. v. Harakas*, 44 S.W.3d 912, 919 (Tenn. Ct. App. 2000), *perm. app. denied* (quoting Banks & Entman, TENNESSEE CIVIL PROCEDURE § 4-3(1) (1999)); *Tesmer v. Granholm*, 333 F.3d 683, 702 (6th Cir. 2003)(reversed on other grounds); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)(citing only two components: “the absence of its issuance he will suffer irreparable injury and also that he is likely to prevail on the merits.”).

¹³⁴Tenn. Code Ann. § 23-3-103(c)(1).

¹³⁵Tenn. Code Ann. § 23-3-103(c)(3).

¹³⁶Tenn. Code Ann. § 47-18-108(a)(1).

¹³⁷Tenn. Code Ann. § 47-18-108(a)(4).

Further, courts have consistently imposed temporary injunctions where, as here, there is evidence of widespread and pervasive deception and unlawful activity.¹³⁸

B. The Evidence Presented Justifies Entry of a Temporary Injunction

The State has submitted compelling evidence which establishes that the Defendants have engaged in the unauthorized practice of law and other unfair or deceptive acts or practices associated with the operation of their businesses.

1. The State Has Demonstrated a Likelihood of Success on the Merits

As evidenced by the Statement of Facts in Part I of this memorandum and the State's Complaint and Exhibits, the State's Motion for a Temporary Injunction and Exhibits including affidavits, the State has demonstrated a likelihood of success on the merits with regard to its claims arising under the UPL statutes and the Tennessee Consumer Protection Act.

For purposes of the temporary injunction hearing, Tennessee state courts,¹³⁹ federal courts,¹⁴⁰ and the Tennessee Rules of Civil Procedure¹⁴¹ all allow for the admittance of affidavits over hearsay objections. Tenn. R. Civ. P. 65.04 expressly allows for the use of a "verified complaint, affidavit, or other evidence." The affidavits and accompanying exhibits to the Motion and Complaint are identical to the verified complaint and the affidavit in that the witness swears

¹³⁸ See also *FTC v. Amy Travel Service*, 875 F.2d 564, 571-72 (7th Cir. 1989); *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989); *World Travel Vacation Brokers*, 861 F.2d at 1026-28; *FTC v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1434 (11th Cir. 1984); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 718-19 (5th Cir. 1982).

¹³⁹ *Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 120 S.W.3d 841, 857 (Tenn. Ct. App. 2003).

¹⁴⁰ See, e.g., *Nat'l Testing Servs., LLC*, No. 3:05-0613, 2005 WL 2000634, at *2.

¹⁴¹ Tenn. R. Civ. P. 65.04(2) ("A temporary injunction may be granted during the pendency of an action if it is clearly shown by *verified complaint, affidavit* or other evidence that the movant's rights are being or will be violated by an adverse party. . . .").

or affirms that the facts he or she has stated are the truth or are truthful to the best of his or her knowledge.

2. The Balance of Equities Mandates a Temporary Injunction

The balance of equities mandates temporary injunctive relief. Where, as here, public and private equities are at issue, public equities far outweigh private equities.¹⁴²

Defendants' past misconduct "gives rise to the inference that there is a reasonable likelihood of future violations."¹⁴³ Further, Defendants can have no vested interest in a business activity that is unlawful.¹⁴⁴ Here, without the entry of the proposed temporary injunction Defendants could continue to issue falsified governmental documents (i.e., marriage licenses and certificates) to Tennessee consumers and consumers may incorrectly rely upon the alleged attorney and certified public accountant credentials of Defendant Virula.

Past misconduct is "highly suggestive of the likelihood of future violations," especially where, as here, there is a pattern of unlawful conduct as opposed to an isolated occurrence.¹⁴⁵ The record establishes that Defendants have falsified marriage certificates and falsely represented Elmer Virula's status as an attorney and certified public accountant in Tennessee.

C. The State has shown a substantial likelihood of success on the merits.

The Sixth Circuit Court of Appeals has held that "[i]n order to establish a likelihood of success on the merits of a claim, a plaintiff must show more than a mere possibility of success."¹⁴⁶ "However, it is ordinarily sufficient if the plaintiff has raised questions going to the

¹⁴² *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989).

¹⁴³ *SEC v. R. J. Allen & Assoc., Inc.*, 386 F.Supp. 866, 877 (S.D. Fla. 1974); *CFTC v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979) ("Once a violation is demonstrated, the moving party need only show that there is some reasonable likelihood of future violations.") (citations omitted).

¹⁴⁴ *United States v. Diapulse Corp. of Am.*, 457 F.2d 25, 29 (2d Cir. 1972).

¹⁴⁵ *Commodity Futures Trading Comm'n. v. Hunt*, 591 F.2d 1211, 1220 (7th Cir. 1979).

¹⁴⁶ *Six Clinics Holding Corp., II v. CAFCOMP Systems*, 119 F.3d 393, 407 (6th Cir.1997).

merits so serious, substantial, difficult, and doubtful as to make them fair grounds for litigation and thus for more deliberate investigation.”¹⁴⁷

By proffering the above statement of facts and attached affidavits and exhibits to the Motion and Complaint, the State has certainly raised questions that go to the merits that are so serious and substantial as to make them fair grounds for litigation.

D. Defendants’ Issuance of Falsified Marriage Certificates and False Representations of Credentials as an Attorney and Certified Public Accountant Establishes Irreparable Harm

While, as previously discussed, the State need not show immediate and irreparable harm under a statutory injunction, in the federal system the Middle District of Tennessee has stated that irreparable harm absent an asset freeze is “even more apparent where the very assets subject to a potential judgment will likely be dissipated without entry of the order.”¹⁴⁸ So even absent having to prove this requirement, the State has established irreparable harm because evidence exists that Defendant Virula or Defendants falsified California marriage certificates for Tennessee consumers and falsely promoted Defendant Virula as a licensed attorney and certified public accountant.

E. Substantial Harm to Others

Defendants have created falsified marriage certificates which are relied on by Tennessee consumers. Consumers believe the purported certificates confer rights associated with a legal marriage. Acting on that belief, consumers could file joint tax returns and apply for citizenship based on the marriage, among other things. If the marriage is found to be void, these consumers

¹⁴⁷*Id.*

¹⁴⁸ *Advocate Capital, Inc. v. Law Office of A. Clark Cone, P.A.*, No. 3:06-0847, 2006 WL 3469576, at *3 (M.D. Tenn. Nov. 29, 2006) (citing *Elliott v. Kiesenwetter*, 98 F.3d 47, 58 (3d Cir. 1996)).

could face substantial legal consequences including deportation. It is in the public interest to prevent falsified marriage certificates from being distributed to avoid these substantial harms.

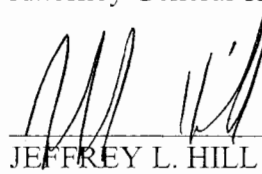
CONCLUSION

Consumers in Tennessee have suffered, and continue to suffer, monetary losses and other losses as a result of Defendants' violations of the TCPA and the UPL statutes as set forth above. Consumer losses stem not from isolated or sporadic commercial episodes, but rather from the systematic and continuing use of unfair and deceptive acts and practices. Defendants have been unjustly enriched as a result of their violations of the TCPA and UPL statutes at the expense of consumers. Absent injunctive relief by this Court, Defendants are likely to continue to injure and exploit consumers, reap unjust enrichment, and harm the public interest.

This is the first application by the Plaintiff, the State of Tennessee, for extraordinary relief in this matter.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Jeffrey L. Hill", is written over a horizontal line.

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